

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. 433 66 5888
Issued to: Ronald Aumont SMITH

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2119

Ronald Aumont SMITH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 27 July 1977, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a chief pumpman on board the United States SS AMERICAN EAGLE under authority of the document above captioned, on or about 13 May 1977, Appellant wrongfully had in his possession marijuana.

At the hearing, Appellant elected to act as his counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the following documents:

- (1) Affidavit of Service of the Charges,
- (2) Copy of Form CG-735T, Master's Report of Seaman shipped or discharged,
- (3) Copy of Certificate of Discharge for Merchant Seaman to Ronald A. Smith, Sr.,
- (4) Copy of Pay Voucher from American Eagle Tanker Corp.,
- (5) Copies of Pages 37, 38, and 39 from the Official Logbook of the S.S. AMERICAN EAGLE, (not admitted)
- (6) Photo-copy of Page 42 of Official Logbook, S.S. AMERICAN EAGLE,
- (7) U.S. Customs Laboratory Report,
- (8) Chain of Custody for substance found on S.S. AMERICAN EAGLE,
- (9) Sworn Statement of Francis P. POWERS, Master, S.S. AMERICAN EAGLE,
- (10) Statement of Edward MALLON, Chief Officer, S.S. AMERICAN EAGLE.

The chief engineer on board the SS AMERICAN EAGLE, Mr. James W. ECCLES, testified on behalf of the Investigating Officer.

In defense, Appellant offered in evidence a statement by the Chief Steward, SS AMERICAN EAGLE, and testified in his own behalf. At the instance of the Appellant, the Administrative Law Judge mailed a written question to the AMERICAN EAGLE's First Assistant Engineer regarding whether Appellant had notice of a sanitary inspection on 13 May 1977. The answer was in the affirmative.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision and order was served on 3 August 1977. Appeal was timely filed on 31 August 1977. No further documents have been received from Appellant. Accordingly, this decision is based on the record and the notice of appeal filed on 31 August 1977. 46 CFR 5.03-3.

FINDINGS OF FACT

On 13 May 1977, Appellant was serving as a Chief Pumpman on board the United States SS AMERICAN EAGLE and acting under authority of his document while the ship was at sea on a voyage between New Orleans, Louisiana and Boston, Massachusetts. Appellant was informed that there would be a sanitary inspection that day, but was not informed that there would be a contraband search. The Chief Engineer was informed by the Master that there would be a surprise contraband search at 0900, 13 May 1977. At 0900, a surprise search was made in the room of second Pumpman Levi WILLIAMS. Appellant was present during the search in his capacity as union delegate. He learned that the Master intended to search his room as well and left WILLIAMS' room to go to his own through an adjoining head.

The Chief Engineer who was also present during the search of WILLIAMS' room then went out into the passageway and observed Appellant coming out of his room carrying a cigar box. The Chief asked Appellant what was in the cigar box and Appellant replied, "Nothing." The Chief then asked to see inside of the box and grabbed for it. He succeeded in getting hold of the box but Appellant took it away, hurried up the passageway to the weather deck and tossed the cigar box overboard. Some of the material in the box spilled out onto the passageway deck where the Chief Engineer was standing. This material was swept up, placed in envelopes, put in the Master's safe for safekeeping, and later analyzed to be marijuana. In addition, similar material in Appellant's room near his bunk and on his bureau was put into envelopes and it too was analyzed as marijuana. The amount of the marijuana found in Appellant's room and on the deck outside his room after being spilled out of the cigar box was 3.21 grams.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant urges that he should not have been permitted to continue his hearing without representation by counsel in view of the possible sanction; that the amount of marijuana involved is too minor to warrant so severe a sanction; that I.O. exhibit No. 7 should not have been admitted without clarification as to where the sample marked "cook's room" came from; and that the Administrative Law Judge erred by admitting evidence which was prejudicial to Appellant without considering the offsetting effect of his military veteran status and his 10 years of service in the merchant marine.

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OPINION

With respect to Appellant's first assignment of error it should first be pointed out that the constitutional right to appointed counsel arises only in criminal cases, not in administrative proceedings. The government's responsibility with regard to counsel in administrative proceedings is to inform the person of his right to be represented by counsel at his own expense and to allow him to be represented by counsel should he so chose. The record shows that Appellant was informed of this right by the Investigating Officer at the time he was informed of the charge and that he acknowledged this information. See I.O. Exhibit No. 1. The record reveals that Appellant was further advised of the possible consequences of the hearing and of his right to be represented by counsel by the Administrative Law Judge. TR. 4-6. The government can not be held in error because Appellant, being aware of his right and of the serious consequences involved in his exercise of the right, chose not to be represented by counsel (as is also his right). Commandant Appeal Decision 2089 (Stewart).

With respect to Appellant's second contention, 3.21 grams is not a minor amount. It has been held previously that 1.1 to 2.1 grams is not a minor amount. Commandant Appeal Decision 2077 (FARMER); Commandant Appeal Decision 1987 (Brown), affirmed by the NTSB, Order EM-37. In Brown, the NTSB found that, "In the

marijuana cigarette, for example, a usable quantity varies within an approximate range of one-quarter to one-half grams."

Appellant's third contention concerns I.O. Exhibit No. 7, a Customs Laboratory Report of samples collected during the search on May 13, 1977 aboard the SS AMERICAN EAGLE. Appellant contends that this exhibit should not have been admitted without a clarification as to where the sample marked "cook's room" came from, because this particular sample did not contain marijuana and it could be presumed that this sample came from Appellant's room. The information contained on that form was that all samples turned over to U.S. Customs in Boston, Massachusetts for testing except the sample marked "cook's room" contained marijuana. Since only 5 samples were turned over by the Master of the American Eagle and Appellant's room was not the cook's room, it can be found that Appellant's room was the source of samples one - four. Thus, the "presumption" can not arise, and this assigned error is without merit.

With respect to Appellant's fourth assigned error, there was no error in admitting I.O. Exhibit No. 10. At the hearing, Appellant objected to the erroneous identity of the First Assistant Engineer in this statement, but otherwise had no objection. The Administrative Law Judge acknowledged the objection to this point and inquired whether Appellant had any other objection, to which Appellant replied, "No." The fact that the exhibit may have contained adverse matter as to Appellant is not in and of itself grounds to allege error in the admission of the exhibit. There is no evidence that the Administrative Law Judge was prejudiced by the admission of the exhibit,, indeed, the Administrative Law Judge bent over backward in favor of Appellant's objection as to the identity of the First Assistant Engineer in the exhibit.

As part of this same assigned error Appellant urges that in view of the 10 years which Appellant served in the merchant mariner and his status as a military veteran, that the revocation of his document was unnecessarily harsh. Appellant overlooks the fact that revocation is mandatory if the offense of which he was charged is found proved. Only if the Administrative Law Judge is satisfied that the possession was the result of experimentation and that the possession will not recur can he enter a lesser order, 46 CFR 5.03-4.

The substantial evidence of record shows that Appellant wrongfully possessed marijuana on board the vessel on the date charged.

CONCLUSION

On 13 May, 1977, Appellant wrongfully possessed marijuana on board the United States SS AMERICAN EAGLE while serving under the authority of his Coast Guard Merchant Mariner's Document.

ORDER

The order of the Administrative Law Judge dated at Boston on 27 July 1977, is AFFIRMED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 12th day of April 1978.

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